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October 12, 2006

Mr. Philip N. Hogen, Chairman
National Indian Gaming Commission
1441 L Street NW
Suite 9100
Washington, DC 20005

Dear Chairman Hogen:

Thank you for providing **Nick Farley & Associates, Inc. (NFA)** with the opportunity to participate on the panel discussing the proposed Class II definitions and classification standards. We were honored to have been among the selected few who were invited to this panel among the wealth of experienced and knowledgeable industry professionals. As you may be aware, **NFA** has a long history of cooperation and assistance with the NIGC, having served as an expert witness, and providing technical assessments of Bingo systems to assist the NIGC in determining proper classification under IGRA.

NFA is in receipt of your letter dated September 27, 2006. In this document you presented several questions pertaining to our testing and the proposed regulations. **NFA** is grateful that you have selected our company to provide your agency with insight on the impact of the proposed regulations as you proceed with the onerous task of standards development.

The following is our response to these questions:

- 1. Do you currently perform testing of the nature described in the proposed regulations for tribes? What standards do you test against? How are those results used?**

We often receive requests from manufacturers to review devices and systems for classification under IGRA. When such requests arise, we typically review the product for compliance with the requirements for a Class II Bingo system as established in the NIGC Advisory Opinion for the Sierra Design Group *Mystery Bingo* system (SDG Advisory Opinion). In the SDG Advisory Opinion, the NIGC outlined several criteria as bullet points, that were used to render their opinion. We have been using the bullet points as our guideline for current evaluations.

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Whenever we receive a request for a review under IGRA, we advise our customers to contact the NIGC to discuss their product and its implementation. We also inform them that our report will be issued to the NIGC. Upon completion of our review, we generate a report which, in part, describes the operation of the device or system. To date, the majority of our reports have been sent to the NIGC for further review and consideration. Typically, NIGC staff requests the manufacturer to present their product. There have been occasions when NIGC staff has contacted *NFA* to seek clarification or request further evaluation of a specific feature or method of game play.

Additionally, there are occasions when manufacturers present products to be tested as Class II gaming systems for which a Tribe requests that the report be issued to them instead of the NIGC. This does not happen often. In such instances, we respect the sovereignty of the Tribe and advise the manufacturer that acceptance from a single Tribe may limit the use of their product, but an Advisory Opinion from the NIGC will permit use in all Tribal gaming facilities throughout the USA. When such an instance does occur, we typically evaluate the product for the requirements of a Class II Bingo system as outlined in the SDG Advisory Opinion, unless the Tribe requests the evaluation to be conducted to some other standard.

2. What are your procedures for testing tribes now?

Right now there seems to be an industry-wide self-imposed moratorium on seeking classification of devices and systems under IGRA. With the discussions and revisions being made to Class II Classification and Technical Standards, most Class II suppliers are not seeking laboratory analysis for classification determination.

In the rare instance when we receive a game or system during these uncertain times, we will evaluate the product(s) to the requirements of a Class II Bingo system as outlined in the SDG Advisory Opinion and the Proposed Classification and Technical Standards. We will advise the manufacturer of any shortcomings. There is often hesitation from the manufacturers to correct issues that pertain to the Proposed Standards.

3. What are the problems, if any, with the proposed lab process?

The proposed lab process is typical of the process established with many gaming jurisdictions that regulate legalized casino gaming. In those jurisdictions, device and system manufacturers are required to submit their products to a testing laboratory to be evaluated for compliance with established standards and/or regulations. This process is an accepted and relied upon task of gaming regulation.

Possible foreseeable problems would be political in nature. Specifically, if a Tribe wishes to enact standards that are above and beyond those standards proposed by the NIGC, it is possible that such a Tribe would not be willing to share its standards with all of the NIGC authorized testing laboratories. Therefore, a single Tribe could limit competition amongst testing laboratories, and create a monopoly.

This scenario is real, as it occurs in regulated state gaming jurisdictions where only one testing laboratory is authorized. In such instances, manufacturers of products seeking sales in the non-competitive jurisdiction utilize the sole-authorized testing laboratory for all of its testing needs in many gaming markets.

4. *Are the regulations sufficiently clear for you to implement them?*

As stated in my testimony at the NIGC hearing on Classification Standards on September 19, 2006, the Proposed Classification and Technical Standards are plausible and testable. The Proposed Standards reflect a format that is common among standards established with regulated casino gaming jurisdictions.

The only issue with the Proposed Standards is that, as written, *NFA* knows of no Class II Bingo system that currently meets these requirements. This includes systems currently in operation with favorably Advisory Opinions from the NIGC.

However, *NFA* believes that the criteria established in the Proposed Standards could be implemented by our laboratory.

5. *Are you certified or licensed by any states that you test for? What's the process and criteria for such license/certification?*

NFA is currently certified or licensed in many jurisdictions, and continues to undergo probity for licensure or certification in jurisdictions where it seeks regulatory authorization as an Independent Testing Laboratory. Jurisdictions where *NFA* is authorized as an Independent Testing Laboratory through a licensing or certification process include the following:

- a. Agua Caliente (CA) Tribal Gaming Commission
- b. Alberta (Canada) Liquor and Gaming Commission
- c. Arizona Department of Gaming
- d. British Columbia (Canada) Gaming Policy and Enforcement Branch
- e. Connecticut Department of Special Revenue
- f. California Gambling Control Commission
- g. Florida Dept of Business & Professional Regulation Div of Pari-Mutuel Wagering
- h. Louisiana State Police Casino Gaming Section
- i. Mississippi Gaming Commission
- j. Oklahoma Horse Racing Commission
- k. Oregon State Police Tribal Gaming Section
- l. Saskatchewan (Canada) Liquor and Gaming Authority
- m. Sycuan (CA) Gaming Commission
- n. Washington State Gambling Commission

The requirements for these licenses and certifications vary greatly. At the very least, each of the agencies that have granted *NFA* a license or certification has required that an Application Form be completed. Some agencies require a fee to be paid, many do not. Some agencies visit our testing facilities, many do not.

Most agencies seek to determine suitability and stability of the business and its principals. It is often requested that we supply tax returns and/or financial statements with our license applications. We have to disclose any litigation or arrests (other than traffic violations). We have to disclose any ownership interests in any other businesses, especially gaming-related businesses.

6. Are states concerned about more than your corporate fitness? i.e. do they set engineering standards for you and review your engineering work?

Many states are just concerned with corporate fitness and suitability of character for our principals. There are very few states that set engineering standards for our company. Most that visit our facilities are concerned with physical security and industry knowledge. There have been rare instances when documentation of our testing has been requested.

7. Is NIGC certification of the labs necessary? If not, is there a mechanism for identifying reliable labs that you would recommend?

NFA believes that it is imperative for the NIGC to certify / authorize / recognize testing laboratories that it believes are credible and suitable to conduct INDEPENDENT, UNBIASED, RELIABLE testing for compliance with established rules, regulations and standards. This certification / authorization / recognition will assure that only viable bona-fide independent testing laboratories will provide testing and issue reports on Class II gaming systems.

NFA strongly believes that multiple testing laboratories must be certified / authorized / recognized to compete for testing business in order to maintain integrity and drive improvements and innovation in testing and regulation of Class II gaming. The NIGC should assure that no Tribes usurp the assertion to promote competition. As stated previously, no Tribe should limit testing to a single testing laboratory, or limited quantity of testing laboratories. NIGC should mandate that all Tribes should recognize and accept any Independent Testing Laboratory that is certified / authorized / recognized by the NIGC.

A failure to certify / authorize / recognize testing laboratories could possibly result in special interest testing laboratories surfacing that are involved in the development of products, or are owned or controlled by an entity that will derive benefit from specific products gaining market share in the industry.

8. *Would you revise the proposed certification process? How?*

LABORATORY CERTIFICATION

There is one area where we would like to specifically suggest an improvement. In the proposed standards, the NIGC has the authority to certify / authorize Independent Testing Laboratories, and will exercise its authority to object to a laboratory certification if it finds such certification to be in error. However, the standards do not include an authority to reprimand a laboratory that blatantly disregards the standards and/or IGRA, and attempts to usurp the proposed process by certifying otherwise Class III games. The current proposed regulations do not detail any consequences to an entity if the NIGC believes that the entity has not conducted itself in a proper, impartial, and independent manner.

GAME AND SYSTEM CERTIFICATION

As *NFA* stated in its testimony at the NIGC hearing on Classification Standards, as an Independent Testing Laboratory we are able and willing to test products for Compliance with any Classification or Technical Standard adopted by the NIGC. The Draft of these standards that is under consideration is plausible and testable. With that stated, we would like to state that the NIGC should consider revisions to the Proposed Classification and Technical Standards to be in line with current Advisory Opinions issued to Class II systems that are in use upon reliance of these Advisory Opinions.

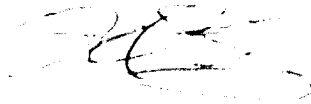
9. *Would it cost more to examine machines under the proposed regulation than it would under your current reviews? How much?*

Evaluations under the proposed regulation would add significant costs to manufacturers seeking classification certification. Under the proposed Classification and Technical Standards, testing time would increase significantly to address the accounting and security requirements. While it is difficult to estimate the actual time to evaluate a Class II Bingo system under the proposed regulation, and each system will present its own unique set of challenges when evaluated, *NFA* would guess that costs associated with testing should increase at least 50%.

Currently, testing Class II Bingo systems for compliance with the SDG Advisory Opinion and working with NIGC staff to assist in rendering an opinion will cost a manufacturer approximately \$5,000.00 to \$10,000.00. Under the proposed regulations, we estimate testing costs to rise to approximately \$7,500.00 to \$20,000.00 depending upon the complexity and compliance of the system being reviewed. Please note that these are merely estimations based upon experience of testing similar systems. Actual prices will vary. Our testing is conducted upon an hourly fee basis, and manufacturers are charged only for the actual time required to test products for compliance.

NFA sincerely hopes that you find this information to be useful and informative. If you should have any further questions or require any additional information, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nick Farley', with a stylized flourish at the end.

Nick Farley
President